

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90786; File No. SR-IEX-2020-19)

December 22, 2020

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Transaction Fees Pursuant to IEX Rule 15.110

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 11, 2020, the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,³ and Rule 19b-4 thereunder,⁴ IEX is filing with the Commission a proposed rule change to amend its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c) (the “Fee Schedule”) to modify certain promotional pricing incentives for the execution of Discretionary Limit (“D-Limit”) orders. Changes to the Fee Schedule pursuant to this proposal are effective upon filing,⁵ and the Exchange plans to implement the changes on January 1, 2021.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

The text of the proposed rule change is available at the Exchange's website at www.iextrading.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to modify certain pricing incentives currently applicable to executions of Discretionary Limit ("D-Limit"), Discretionary Peg ("D-Peg"), and Midpoint Peg ("M-Peg") order executions that were implemented with the launch of the D-limit order type on October 1 2020.⁶ Specifically, the Exchange proposes to eliminate the fee discount of \$0.0002 per executed share available to IEX Members⁷ for liquidity-providing D-Peg and M-Peg orders.

The D-Limit order type was approved by the Commission on August 26, 2020,⁸ and is

⁶ See Securities Exchange Act Release No. 89967(September 23, 2020), 85 FR 63616 (October 8, 2020) (SR-IEX-2020-14).

⁷ See IEX Rule 1.160(s).

⁸ See Securities Exchange Act Release No. 89686 (August 26, 2020), 85 FR 54438 (September 1, 2020) (SR-IEX-2019-15).

designed to protect liquidity providers from potential adverse selection by latency arbitrage trading strategies in a fair and nondiscriminatory manner. A D-Limit order may be a displayed or non-displayed limit order that upon entry and when posting to the Order Book⁹ is priced to be equal to and ranked at the order's limit price, but will be adjusted to a less-aggressive price during periods of quote instability, as defined in IEX Rule 11.190(g).¹⁰ Otherwise, a D-Limit order operates in the same manner as either a displayed or non-displayed limit order, as applicable,¹¹ and accordingly, the Exchange determined that liquidity-taking D-Limit orders would be subject to the same transaction fees as other displayed or non-displayed orders.¹²

Currently, a D-Limit order that provides liquidity and is executed at a price at or above \$1.00 results in a free execution.¹³ In addition, D-Peg and M-Peg orders that provide liquidity and execute at a price at or above \$1.00 per share are currently subject to a discount of \$0.0002 per share from the fee that would otherwise be charged for the number of shares of such orders executed up to the number of shares of D-Limit orders that provided liquidity and executed at a price at or above \$1.00 per share during such time period by the same Member, measured on a monthly basis.¹⁴

⁹ See IEX Rule 1.160(p).

¹⁰ See IEX Rules 11.190(b)(7) and 11.190(g).

¹¹ See IEX Rule 11.190(b)(7).

¹² Generally, IEX currently charges \$.0003 per share for any displayed orders that execute (whether they add or remove liquidity) and \$.0009 per share for any non-displayed orders that execute (whether they add or remove liquidity). If the shares execute for less than \$1.00 per share, the Exchange charges 0.30% of the total dollar value of the transaction. See IEX Fee Schedule, <https://iextrading.com/trading/fees/>.

¹³ See IEX Fee Schedule, <https://iextrading.com/trading/fees/>.

¹⁴ For purposes of the discount, IEX aggregates all of a Member's MPIDs to calculate each Member's D-Peg, M-Peg, and D-Limit liquidity providing orders on a monthly basis. Upon a Member's request and subject to IEX's review and verification of the affiliate's

The fee discounts were designed to provide a narrowly tailored incentive for Members to utilize D-limit orders, a new and innovative order type, taking into account that Members seeking to utilize the new D-Limit order type may have needed to modify and test new trading strategies and order entry systems in order to do so. Accordingly, the pricing incentives implemented by the Exchange were designed to provide a meaningful economic incentive for such efforts and to encourage use of this new order type.

However, IEX has concluded that, while free executions for liquidity providing D-Limit orders priced at or above \$1.00 continues to be an appropriate incentive, elimination of the related fee discount of \$0.0002 per share for the execution of liquidity providing D-Peg and M-Peg orders is appropriate in order to simplify the fee structure. Specifically, based on informal discussions with Members, the Exchange understands that the fee discounts for non-D-Limit related order flow has created complexities in tracking applicable fees and corresponding billing for some Members and therefore do not provide a meaningful incentive for the use of D-Limit orders. As a result, the Exchange proposes to eliminate the fee discount of \$0.0002 per share for the execution of liquidity providing D-Peg and M-Peg orders.

The Fee Schedule will continue to provide that execution of a D-Limit order that adds liquidity will result in a free execution, with the exception of executions below \$1.00, which will continue to be assessed a fee of 0.30% of TDV (unless otherwise eligible for a free execution in accordance with the IEX Fee Schedule).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of

relationship to the requesting Member, IEX will aggregate the Member's activity with activity of the Member's affiliated Member(s).

the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(4)¹⁶ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable fees among IEX Members and persons using its facilities. Additionally, IEX believes that the proposed changes to the Fee Schedule are consistent with the investor protection objectives of Section 6(b)(5)¹⁷ of the Act, in particular, in that they are designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, brokers, or dealers.

The Exchange believes that the proposed changes are consistent with the Act because they will be applicable to all Members on a fair, equal and nondiscriminatory basis. The transaction fee discount was part of a narrowly tailored approach, designed to maximize participation for the launch of D-Limit, while free executions for liquidity providing D-Limit orders priced at or above \$1.00 per share is designed to provide the primary pricing incentive. As with any new order type, the implementation of D-Limit required a period during which Members needed to become familiar with its operation and potentially adjust order entry systems and trading strategies to effectively use D-Limit orders. However, based on informal Member feedback regarding the complexity such discounts have created, IEX believes that the transaction fee discounts are no longer necessary to incentivize Members to use D-Limit orders.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ 15 U.S.C. 78f(b)(5).

The Exchange further believes that the proposed amendment is consistent with the Act's requirement that the Exchange provide for an equitable allocation of fees. The Exchange's proposal involves the elimination of transaction fee incentives that were available to all Members based on executions of liquidity adding D-Peg and M-Peg orders. Similarly, eliminating the transaction fee incentive will apply in an equal and nondiscriminatory manner to all Members. All Members will continue to be subject to the same fees for the use of D-Limit orders. Moreover, eliminating the fee discount will operate to simplify the Exchange's fee structure and reduce any corresponding order tracking and billing complexities on the part of Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed fees will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which market participants can easily direct their orders to competing venues, including off-exchange venues, if its fees are viewed as non-competitive. Moreover, IEX believes that the proposed fees, as amended, continue to be designed to enhance competition by increasing the Exchange's pool of both displayed and non-displayed liquidity, and to the extent that displayed liquidity increases, would contribute to the public price discovery process. Further, subject to the SEC rule filing process, other exchanges could adopt a similar order type and fee incentive.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. While Members that add liquidity using certain D-Limit orders will be

subject to different fees based on this usage, those differences are not based on the type of Member entering orders but on whether the Member chose to submit certain liquidity providing D-Limit orders. As noted above, not only can any Member submit certain liquidity adding D-Limit orders, but every Member would benefit from the availability of more liquidity on the Exchange that the proposed fees are designed to incentivize. The Exchange is proposing to eliminate discounted transaction fees for certain D-Peg and M-peg orders that were part of a narrowly tailored incentive for Members to begin using the D-Limit order type. As discussed in the Purpose and Statutory Basis sections, the Exchange has concluded that the fee transaction discounts are no longer necessary to incentivize Members to use D-Limit orders and can operate to introduce certain complexities in order tracking and billing. Accordingly, the Exchange does not believe that eliminating the transaction fee discounts will have any impact on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)¹⁸ of the Act.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

Commission shall institute proceedings under Section 19(b)(2)(B)¹⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-IEX-2020-19 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-IEX-2020-19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F

¹⁹ 15 U.S.C. 78s(b)(2)(B).

Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2020-19, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Eduardo A. Aleman
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).